IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 384 of 1997
With
CRIMINAL APPEAL No. 385 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
AND
HONOURABLE MR.JUSTICE J.C.UPADHYAYA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
SUBHASH @ MAHESHBHAI MAGANBHAIKOLI PATEL & 1 - Opponent(s)

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Appearance :
MR UR BHATT, APP for Appellant(s) : 1,
MR BS SUPEHIA for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE J.C.UPADHYAYA

Date : 15/12/2008

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.C.UPADHYAYA)

1. Both these appeals arise out of a common judgment and order dated 6.2.1997 rendered by learned Additional Sessions Judge, Valsad at Navsari ('learned trial Judge', for short) in Sessions Case No.62 of 1994. The learned trial Judge by virtue of the impugned judgment and order convicted the respondent – accused No.1 Subhash alias Maheshbhai Maganbhai Koli Patel for the offences punishable under Sections 304 Part II and 324 of the Indian Penal Code ('IPC', for short) and awarded sentence of R.I for 4 years and fine of Rs.500/-, in default S.I for 2 months for the offence punishable under Section 304 Part II of the IPC and R.I for 6 months and fine of Rs.300/-, in default to undergo S.I for 15 days for the offence punishable under Section 324 of the IPC. By virtue of the impugned judgment and order, the learned trial Judge recorded conviction of respondent – accused No.2 Manoj alias Munno Maganbhai Koli Patel for the offence punishable under Section 323 of the IPC and awarded sentence of S.I for 3 months and fine of Rs.300/-, in default to undergo S.I for 15 days for the offence punishable under Section 323 of the IPC.

1.1. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence that the learned trial Judge awarded very lenient sentence, and for the purpose of enhancement of sentence under Section 377 of the Code of Criminal Procedure ('Cr.PC', for short), the State of Gujarat preferred Criminal Appeal No.384 of 1997. By virtue of the impugned judgment and order, the learned trial Judge was pleased to acquit both the accused persons for the

offence punishable under Section 302 of the IPC. Therefore, the State of Gujarat preferred Criminal Appeal No.385 of 1997 under Section 378 of the Cr.PC, requesting that both the respondents – accused be convicted and appropriately sentenced for the offence punishable under Section 302 of the IPC.

2. The prosecution case in nutshell is that the incident occurred between 19.30 to 19.45 hours on dated 30.3.1994 in Village Dhanori, District Valsad. Some quarrel took place for not taking Falguni, the daughter of witness Bhanabhai to dispensary and not sending Vanita, the wife of witness Bhanabhai at her maternal house. It is alleged that in the quarrel, the respondent – accused No.1 Subhash intervened and inflicted knife blow on the back of deceased Ambubhai and inflicted a knife blow on the hand of first informant Sureshbhai and that the deceased Ambubhai was caught hold of by the respondent – accused No.2 Manoj and caused simple injury on his throat. First informant Sureshbhai Bhanubhai lodged FIR in connection with this offence. Offence was registered and the police commenced investigation, statements of material witnesses were recorded and weapon-knife was recovered by drawing panchnama. Dead-body of the deceased was sent for post-mortem. After receiving PM report and FSL report, police filed chargesheet in the Court of learned JMFC, Valsad against both the accused persons for the offences punishable under Sections 302, 324, 323 read with Section 114 of the IPC and for the offence punishable under Section 135 of the Bombay Police Act. Since, the offence was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of

sessions, which came to be registered as Sessions Case No.62 of 1994.

3. The learned trial Judge framed charge at Exh.1 against both the accused for the offences punishable under Sections 302, 324, 323 read with Section 114 of the IPC and Section 135 of the Bombay Police Act, to which both the accused persons did not plead guilty and claimed to be tried.

3.1 The prosecution adduced its oral and documentary evidence. After the completion of the oral evidence, the learned trial Judge recorded further statements of accused under Section 313 of the Cr.PC, to which both the accused denied generally all the allegations levelled against them by the prosecution. After appreciating the evidence on record and after considering arguments advanced on behalf of both the sides, the learned trial Judge rendered the impugned judgment and order and he was pleased to convict the respondent – accused No.1 Subhash for the offence punishable under Section 304 Part II and Section 324 of the IPC and recorded the conviction of respondent – accused No.2 Manoj for the offence punishable under Section 323 of the IPC. Both the accused came to be acquitted for the offence of murder punishable under Section 302 of the IPC.

4. In connection with both these appeals, on behalf of the appellant, learned APP Mr.Bhatt submitted that considering the testimonies of eye-witnesses, including the injured eye-witness and the manner in which both the accused persons committed the offence, the prosecution has successfully proved that both the accused committed the

offence of murder punishable under Section 302 read with Section 114 of the IPC. That therefore, the appeal preferred by the State under Section 378 of the Cr.PC, bearing Criminal Appeal No.385 of 1997 deserves to be allowed and both the respondents-accused be convicted for the offence of murder and be accordingly appropriately sentenced. It is further submitted that even while awarding the sentence for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II of the IPC, the learned trial Judge awarded very linient sentence of R.I for 4 years and fine of Rs.500/- and for the offence punishable under Section 324 and for the offence punishable under Section 323 of the IPC, equally lenient sentence is imposed. Therefore, the State of Gujarat preferred Criminal Appeal No.384 of 1997 under Section 377 of the Cr.PC for enhancement of sentence.

4. None appeared on behalf of the respondents.

5. We have considered the records and proceedings of the trial Court in context with both these appeals. The prosecution examined first informant Sureshbhai Bhanubhai at Exh.14. According to his version, respondent – accused Subhash inflicted a blow of knife on the back of deceased Ambubhai and when he intervened to rescue the deceased Ambubhai, the respondent – accused Subhash inflicted a knife blow on his right wrist and he sustained the injury. Thus, the first informant is injured eye-witness. He lodged the FIR before the police. He is cross-examined at length on behalf of the accused. However, considering his cross-examination, it clearly transpires that before the actual incident took place, there was a quarrel between both the accused and the

deceased and the witnesses of the prosecution. However, considering the testimony of the first informant Sureshbhai, the fact is clear that the involvement of both the accused persons in the incident is established. Prosecution examined witness Bhanabhai Bhagubhai at Exh.15. His testimony runs on the same line like the testimony of first informant Sureshbhai. He also stated that before the incident there was a quarrel between the persons of both the sides. Considering the testimonies of panch witnesses and Investigating Officer PSI Mr.Rathod, Exh.21, it transpires that at the instance of respondent – accused Subhash, the knife was discovered, which was forwarded to FSL for due analysis. Considering the report of the FSL, Exh.24 and the serological report, it transpires that the blood group of deceased was Group-”B” and the blood stains found on the knife were of Group - “B”.

5.1 The prosecution examined Dr.Ramratan at Exh.25, who performed the postmortem on the body of the deceased. Considering the deposition of Dr.Ramratan and the PM report, Exh.11, it transpires that as per the medical opinion, the cause of death of the deceased was shock and hemorrhage, resulting from the stab wound. There was a stab wound over 10th intercoastal space in Posto lateral aspect which was 4 cm away to the 10th vertebrae size was 3 x 2 cm. Dr.Ramratan had also examined injured first informant Sureshbhai Bhagubhai and there was simple injury on right wrist, which was incised wound .

5.2 In the impugned judgment, the learned trial Judge appreciating and evaluating the ocular evidence adduced by the prosecution, together with the medical evidence on

record, came to the conclusion that the prosecution though successfully proved involvement of both the accused persons in this incident, but, the prosecution failed to establish that the accused have committed the offence of murder. The learned trial Judge observed that the evidence adduced by the prosecution reveals that there was a quarrel between the accused and the deceased and his family members and the evidence does not reveal that the accused committed the offence by any prior premeditation. Learned trial Judge observed that the offence was committed without any premeditation in a sudden fight in the heat of passion, upon a sudden quarrel and that though the accused had opportunity to inflict blows and to cause more harm to the deceased and to the first informant Sureshbhai, but they did not take any undue advantage or acted in a cruel or unusual manner. Therefore, the learned trial Judge observed that the case was covered by Exception No.4 of Section 300 of the IPC. Re-appreciating the entire evidence on record, we do not find that while coming to such conclusion, the learned trial Judge committed any illegality or any irregularity. In the result, we are of the considered opinion that the learned trial Judge rightly recorded the acquittal of both the respondent – accused persons for the offence of murder punishable under Section 302 of the IPC and rightly recorded conviction of the respondent - accused Subhash for the offence punishable under Section 304 Part II of the IPC. On the basis of evidence on record, learned trial Judge rightly convicted both the accused in accordance with their respective individual overt act. Therefore, Criminal Appeal No.385 of 1997 preferred by the State of Gujarat under Section 378 of the Cr.PC deserves to be dismissed.

5.3 However, the learned trial Judge while recording the conviction of the respondent – accused No.1 Subhash for the offence punishable under Section 304 Part II of the IPC, awarded the sentence of R.I for 4 years and fine of Rs.500/-, as well as for causing simple injury with knife to first informant Sureshbhai, the learned trial Judge recorded conviction of the respondent – accused No.1 Subhashbhai for the offence punishable under Section 324 of the IPC and awarded sentence of 6 months and fine of Rs.300/-. Both the sentences were ordered to run concurrently. So far as the role played by respondent – accused No.2 Manojbhai, he caused simple injury to the deceased and for that he came to be convicted for the offence punishable under Section 323 of the IPC and was awarded sentence of 3 months and fine of Rs.300/-. The appellant – State preferred Criminal Appeal No.384 of 1997 under Section 377 of the Cr.PC stating that the sentence awarded by the learned trial Judge is very lenient and deserves to be enhanced. However, in the impugned judgment, the learned trial Judge assigned the reasons that both the deceased and the first informant Sureshbhai as well as both the accused persons are family members. Because of the dispute took place in the family, the quarrel took place and in the quarrel, the incident occurred. Both the accused are real brothers and the learned trial Judge recorded that they have the responsibility to get their sister married. It was further recorded that both the accused persons were in jail and under-trial prisoners. Recording such reasons, the learned trial Judge exercised his discretion in awarding the sentence. Considering the punishment prescribed for the offence punishable under Section 304 Part II of the IPC, it is provided that the offence is punishable with imprisonment of either

description for a term which may extend to ten years, or with fine or with both. In the aforesaid background, while fixing the quantum of punishment, it cannot be said that the learned trial Judge exercised the discretionary powers illegally or arbitrarily. The office has reported that the respondent – accused No.1 Subhash has already served the sentence and was released from jail.

6. In the result, we see no merits in Criminal Appeal No.384 of 1997 preferred by the State under Section 377 of the Cr.PC and same deserves to be dismissed.

7. On account of the foregoing discussions, we do not find any merits in these appeals. Both these appeals, therefore, stand dismissed.

(A.L.DAVE, J.)

(J.C.UPADHYAYA, J.)

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